

REMARKS

Reconsideration and withdrawal of the restriction requirement are respectfully requested in view of the remarks herewith.

The Examiner has required restriction to one of the following inventions as required under 35 U.S.C. §121.

- Group I. Claims 1-26 and 28-32, drawn to a multilayer device and methods of making and using the device, classified in class 424, subclass 93.7;
- Group II. Claim 27, drawn to a method making a multilayer device, classified in class 424, subclass 423;
- Group III. Claim 33, drawn to an image reversal method for forming a scaffold, classified in class 435, subclass 174; and
- Group IV. Claims 34-37, drawn to a multilayer device, classified in class 435, subclass 1.1.

Applicants elect Group I for prosecution on the merits. Applicants also respectfully request rejoinder of Groups I, II, and IV.

This election is made *with traverse* and is made without prejudice to Applicants' right to file divisional applications directed to non-elected subject matter. Applicants respectfully disagree with the Examiner's bases for rejection and request that the restriction requirement be favorably reconsidered and withdrawn, or at the very least, that Groups I, II, and IV be rejoined.

The MPEP lists two criteria for a proper restriction requirement. First, the inventions must be independent or distinct. MPEP §803. Second, searching the additional inventions must constitute an undue burden on the examiner if restriction is not required. *Id.* The MPEP directs the Examiner to search and examine an entire application "[i]f the search and examination of an entire application can be made without serious burden, ... even though it includes claims to distinct or independent inventions." *Id.* Applicants urge that the claims of the present invention do not relate to inventions that are independent and distinct. Furthermore, Applicants urge that the search and examination of all of the claims of the present application is likely to be co-extensive, and therefore can be performed for all claims without undue or serious burden to the Patent Office.

In the event that our request for the withdrawal of this restriction requirement is denied, Applicants urge that, at the very least, Groups I, II, and IV be rejoined for the purposes of

combined search and examination. The requirement for restriction between Groups I, II, and IV is improper for the following reasons.

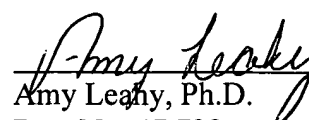
First, a search for the Group I device and methods would inevitably encompass the multilayer device of Group IV. The Group I device comprises at least a first layer and a second layer comprised of a material suitable for attachment and culturing of animal cells, while the Group IV device comprises "multiple layers of material" that can be, for example, a first layer and a second layer similar to Group I. Therefore, a search for a device comprising multiple layers of scaffold material, or at least a first and a second layer of scaffold material, is likely to be co-extensive.

Second, the methods of Group II would also be included in a search for the Group I device and methods, because while the methods of Group II do not explicitly recite the presence of a first and a second layer, rolling and/or folding a single layer can produce a first and a second layer of material suitable for attachment and culturing of animal cells that are joined or fastened together. Consequently, the methods of Group II and the methods of Group I represent different techniques of the same concept: fastening or joining tissue scaffold material. The methods of Group II also apply to the device of Group IV, as methods of rolling and/or folding scaffold material can produce a device comprising multiple layers.

In view of the foregoing, it is submitted that the Groups designated by in the Office Action do not warrant separate examination and search. The claims of the present application represent a web of knowledge and continuity of effort that merits examination in a single application. Therefore, it is submitted that the claims of Groups I through IV should be searched, examined and rejoined. At minimum, rejoinder of Group I, II, and IV is warranted. Accordingly, it is respectfully requested that the restriction requirement be withdrawn, and an early action on the merits is earnestly solicited.

Respectfully submitted,
FROMMER LAWRENCE & HAUG LLP

By:



Amy Leachy, Ph.D.
Reg. No. 47,739
(212) 588-0800